

joinder of charges, and in my opinion this ground of appeal must fail.

The next ground of appeal was that the prosecution had not proved its case and that the appellant should not have been called upon for his defence. The evidence of the 1st witness was to the effect that he called at the appellant's premises and asked to be shown the record of the hire of two vehicles in respect of which the appellant had a permit for the use of these vehicles as hired vehicles. These two vehicles are neither of them the motor car in respect of which the charges in this case were laid. The appellant was absent when this witness called at his premises, and his son produced what the 1st witness seems to have thought was the record of hire of the hired vehicles. In fact it was nothing of the kind. It was a block of printed forms which had been used by the appellant in his business in 1954 before the present system of hire and drive permits came into force on the 1st January, 1955. Amongst these forms this witness discovered entries which suggested to him that the cars in question in these proceedings No. P. 5041 and P. 6633 had been hired out and he put this so-called book in evidence as Exhibit P. 2. The entries referred to were not made by the appellant; and there was no evidence that they were made in the ordinary course of his business or upon his instructions or with his knowledge. In my opinion this so-called book was not evidence against the appellant and should not have been admitted.

P.W. 3 and P.W. 4 are the persons to whom the appellant is supposed to have wrongly hired out these cars. The evidence of P.W. 3, however, was that he went to the appellant's shop and took out car No. P. 5041 on trial at a time when the appellant was not in. The evidence of P. W. 4 was that he took out the car P. 6633 on two occasions on loan and not on hire, and that the appellant was not present when he took the car and that the car was taken without the appellant's permission.

The expressions "causing" and "permitting" in connection with the use of motor vehicles are discussed in the case of *Shave v. Rosner*⁽²⁾. The Lord Chief Justice in that case put the matter very clearly when he said (at page 1060):—

"When those two expressions 'causes or permits' are found in contrast or juxtaposition, 'permits' means giving leave and licence to somebody to use the car, and 'causes' involves a person who has authority to do so ordering or directing someone to use it. If I allow a friend of mine to use my motor-car, I am permitting him to use

it. If I tell my chauffeur to bring my car round and drive me to the Courts, I am causing the car to be used."

I am unable to find any sufficient evidence in this case to prove that the two cars in question were hired at all; and even if they were, there is not a shred of evidence that the appellant caused or permitted the cars to be used. There was, therefore, no evidence before the Court on the charges of causing the motor vehicles to be let out on hire, and the appellant should not have been called upon for his defence in respect of these charges.

With regard to the charges relating to insurance, it may be that if these cars were driven by P.W. 3 or P.W. 4 they were uninsured during such use. If this be so, however, it was the witnesses who committed the offence and not the appellant, because, as I have already pointed out, there was no evidence that the appellant caused or permitted the use of these vehicles. The appellant, therefore, should not have been called upon for his defence in respect of these charges either.

In my opinion there was no evidence that the appellant committed any of the offences charged or any other offence, and I therefore quashed the convictions, and substituted an acquittal in respect of all the charges.

Appeal allowed.

Solicitors for the appellant: *Conaghan, Wreford & Thornton.*

SIU HAN KUN v. LEW TAN

[A.C.J. (Abdul Hamid J.) December 5, 1955]

[Kota Bharu — Civil Appeal No. 3 of 1955]

Evidence Ordinance, 1950, s. 98 — Foreign expression — Court Interpreter's translation — Accuracy of.

If it is intended to impugn the accuracy of the Court Interpreter's translation, evidence has to be called to show what the correct translation should be.

CIVIL APPEAL.

Lee Saik Kee for the appellant.

Respondent in person.

Abdul Hamid J. : — This appeal is against the award made by the Deputy Commissioner for Labour against the appellant for piling work done in the construction of some Government buildings. The sum awarded was \$1,264.20, apart from the \$200 admitted by the appellant to be still owing by him in respect of some other work.

The appellant obtained a contract to construct the buildings, and he in turn entered into a sub-contract with the respondent for the performance of the work. A written agreement in Chinese was executed between them. The appellant's contention is that the work assigned to the respondent included the driving of piles, which the respondent disputed. The issue, therefore, to my mind devolves on the four Chinese characters in the agreement, a translation of which has been rendered by the Court Interpreter as being "construction work". The Commissioner seems to disagree with that translation and gives his own translation of those four characters as being "masonry work".

Section 98 of the Evidence Ordinance provides: "Evidence may be given to show the meaning of foreign expressions.....". If it is intended to impugn the accuracy of the Court Interpreter's translation, evidence has to be called to show what the correct translation should be. The Commissioner may himself desire to give evidence.

For the above reasons I order that the matter be remitted to the lower Court for fresh hearing by way of suit. Costs of this appeal to abide the result of the suit.

Re-hearing ordered.

Solicitors for the appellant: Pillai, Lim, Lee & Hwang.

**SOONG CO. LTD. & ANOR.
v. TEOH CHENG SIM (f)**

[A.C.J. (Spenser Wilkinson J.) October 21, 1955]

[Penang—Civil Appeal No. 3 of 1955]

Landlord & Tenant—Building erected upon land belonging to another person—Bona fide title—Building erected after 31st January 1948—Meaning of "premises"—Control of Rent Ordinance, 1948.

This was an appeal from an order of possession made in the Sessions Court in respect of a piece of land on which a building stood. The building was erected on some date after the 31st January 1948 with the consent of the landlord and was admittedly immovable. The 1st defendant admitted that he was the tenant of the land but claimed he was the owner of the building. The 2nd defendant claimed to be the tenant of the 1st defendant in respect of the building. The tenancy of the 1st defendant was terminated by a month's notice to quit. On the appeal it was argued (1) that there was a *bona fide* dispute as to title and therefore the Sessions Court had no jurisdiction to hear the case; (2) that even if the Sessions Court had jurisdiction, the decision was wrong

because the premises were within the meaning of the Control of Rent Ordinance, 1948, and the plaintiff had not obtained the permission of the Assessment Board.

Held: (1) the term "premises" in the Control of Rent Ordinance does not include land upon which a building was completed after the 31st January 1948 and therefore in this case the plaintiff was entitled to possession without reference to the Control of Rent Ordinance, 1948; (2) when any building (apart from trade fixtures and certain types of movable structure in respect of which a local custom to treat them as movables might be allowed to be proved) is erected upon land the title of the building is inseparable from the title of the land; (3) it is not sufficient in order to constitute a *bona fide* dispute as to title to make a bare allegation that part of the premises belong to the tenant—there must be some substance in the allegation before it can be said to be a *bona fide* dispute; (4) in this case the learned President was right in holding upon the pleadings and the admitted facts that there could be and was no question of title before him.

Cases referred to:—

- (1) *Toh Chin Kwan v. Ng Ah Kak* (1955) M.L.J. 151.
- (2) *Harnam Singh v. K. V. Sambasivam* (1954) M.L.J. 251.
- (3) *Ramsden v. Dyson* (1866), 1 H.L. 129.
- (4) *Plimmer v. Mayor etc. of Wellington* 9 A.C. 699.
- (5) *Chua Sai Ngoh v. Beh Ai Meng* (1955) M.L.J. 167.
- (6) *Hiew Kim Swee v. G. C. Gomez* (1955) M.L.J. 170.

CIVIL APPEAL.

Chang Min Tat for the appellants.

I. K. Meek for the respondent.

Spenser Wilkinson J.:—This was an appeal from an order of possession given in the Sessions Court in respect of a piece of land in Province Wellesley on which stood a building known as No. 3958, Bagan Jermal. The building was admittedly erected on the land at some date after the 31st January, 1948 with the consent of the landlord and is admittedly immovable. It was also admitted in the defence that the 1st defendant was the tenant of the plaintiff in respect of the land in question, but it was alleged that the 1st defendant was the owner of the building and that the 2nd defendant was the 1st defendant's tenant in respect of the building. The 2nd defendant was in occupation of the building and it was admitted that the plaintiff knew this at least from September, 1954. The tenancy of the 1st defendant was terminated on the 31st January, 1955 by a month's notice to quit.